

DET 104783

15

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

Robert Wojtowicz

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

v.

Charter Township of Clinton

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Case: 2:17-cv-11973

Judge: Tarnow, Arthur J.

MJ: Stafford, Elizabeth A.

Filed: 06-21-2017 At 10:37 AM

(CMP WOJTOWICZ V. CLINTON, CHARTER T
OWNSHIP OF (NA)

(to be filled in by the Clerk's Office)

Jury Trial: ☒ Yes ☐ No
(check one)

Complaint for Employment Discrimination

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	<u>Robert Wojtowicz</u>
Street Address	<u>38308 Santa Anna</u>
City and County	<u>Clinton Township</u>
State and Zip Code	<u>Michigan 48036</u>
Telephone Number	<u>(586) 630-0026</u>
E-mail Address	<u>robertvoy@wowway.com</u>

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	<u>Charter Township of Clinton</u>
Job or Title (if known)	<u></u>
Street Address	<u>40700 Romeo Plank Road</u>
City and County	<u>Clinton Township Macomb County</u>
State and Zip Code	<u>Michigan 48038</u>
Telephone Number	<u>(586) 723-8050</u>
E-mail Address (if known)	<u></u>

Defendant No. 2

Name	<u></u>
Job or Title (if known)	<u></u>
Street Address	<u></u>
City and County	<u></u>
State and Zip Code	<u></u>
Telephone Number	<u></u>
E-mail Address (if known)	<u></u>

Defendant No. 3

Name _____

Job or Title _____

(if known) _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

(if known) _____

Defendant No. 4

Name _____

Job or Title _____

(if known) _____

Street Address _____

City and County _____

State and Zip Code _____

Telephone Number _____

E-mail Address _____

(if known) _____

C. Place of Employment

The address at which I sought employment or was employed by the defendant(s) is:

Name Charter Township of Clinton

Street Address 40700 Romeo Plank Road

City and County Clinton Township Macomb County

State and Zip Code Michigan 48038

Telephone Number (586) 723-8050

II. Basis for Jurisdiction

This action is brought for discrimination in employment pursuant to *(check all that apply)*:

- ☐ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

- ☐ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)

- ☒ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

- ☐ Other federal law *(specify the federal law)*:

- ☒ Relevant state law *(specify, if known)*:

Michigan Persons With Disabilities Civil Rights Act, MCL 37.1101, et. seq.

- ☐ Relevant city or county law *(specify, if known)*:

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes *(check all that apply)*:

- ☐ Failure to hire me.
- ☒ Termination of my employment.
- ☐ Failure to promote me.
- ☒ Failure to accommodate my disability.
- ☐ Unequal terms and conditions of my employment.
- ☐ Retaliation.
- ☒ Other acts *(specify)*:

Improper requirement that I submit to unreasonably invasive inquiries upon submission to a Fitness-for-Duty examination when I attempted to return to work;
Improper requirement that I submit to a random drug screen, and refusal to answer my question about why I was being required to submit to said testing.

(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)

B. It is my best recollection that the alleged discriminatory acts occurred on date(s) During January-June 22, 2015; 6/22/15, 6/23/15, 7/9/15, 7/23/15, 8/23/15 & 10/27/15

C. I believe that defendant(s) *(check one)*:

- ☒ is/are still committing these acts against me.
- ☐ is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my *(check all that apply and explain)*:

- ☐ race _____
- ☐ color _____
- ☐ gender/sex _____
- ☐ religion _____
- ☐ national origin _____
- ☐ age. My year of birth is _____. *(Give your year of birth only if you are asserting a claim of age discrimination.)*
- ☒ disability or perceived disability *(specify disability)*
Back and knee surgery

E. The facts of my case are as follows. Attach additional pages if needed.

I underwent surgery on my knee and back during a one-year medical leave of absence in 2014 and 2015.

Prior to June 22, 2015, I attempted to return to work with doctor-imposed restrictions that were reasonable - just light duty work. My employer, Clinton Township, refused to provide me with that reasonable accommodation, and required that I have "no restrictions" in order to return to work.

On June 22, 2015, I attempted to return to work with a letter from my treating physician that stated "no restrictions"; however, my employer refused to permit me to return to work unless an independent doctor evaluated me for a Fitness-for-Duty examination. Clinton Township then placed me on light duty (contradicting their earlier claim that they had no light duty work) pending the IME.

On July 9, 2015, my employer informed me that I would have to submit to a random drug test because the light duty job that I was assigned to was subject to random testing. When I questioned the propriety of the requirement, under the circumstances, I was told that my response would be treated as a refusal. When I pleaded with my employer to understand that I was not refusing the test, but rather, wanted my question answered, I was ignored.

On July 30, 2015, my employer informed me that the IME report came in and reported that I was not fit to return to work.

On August 28, 2015, I was fired, with my employer explaining the reason for termination was that I did not re-establish my employment.

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

IV. Exhaustion of Federal Administrative Remedies

- A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on *(date)*

9/18/15

- B. The Equal Employment Opportunity Commission *(check one)*:

- ☐ has not issued a Notice of Right to Sue letter.
☒ issued a Notice of Right to Sue letter, which I received on *(date)*

March 27, 2017 (dated March 22, 2017) (Ex. A)

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

- C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct *(check one)*:

- ☐ 60 days or more have elapsed.
☐ less than 60 days have elapsed.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages. Attach additional pages if needed.

1. Lost wages and benefits from date of discrimination to present.
2. Reinstatement or lost future wages and benefits.
3. Damages for mental and emotional distress.
4. Punitive damages.
5. Attorney fees and costs of suit.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: June 20, 2017.

Signature of Plaintiff

Printed Name of Plaintiff Robert Wojtowicz

MIED ProSe 7 (Rev 5/16) Complaint for Employment Discrimination

Additional Information:

EXHIBIT A



U.S. Department of Justice
Civil Rights Division

Disability Rights Section - NYA
950 Pennsylvania Ave, NW
Washington, DC 20530

MAR 22 2017

DJ# 205-37-0

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Wojtowicz
38308 Santa Anna
Clinton Township, MI 48036

Re: EEOC Charge Against: Charter Township of Clinton
EEOC No.: 471-2015-03119
DJ#: 205-37-0

Dear Mr. Wojtowicz:

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

It has been determined that the Department of Justice (the Department) will not file suit on the above-referenced charge of discrimination that was referred to us by the Equal Employment Opportunity Commission (EEOC). This should not be taken to mean that the Department has made a judgment as to whether or not your charge is meritorious.

You are hereby notified that conciliation on your case was unsuccessful by the EEOC. You are further notified that you have the right to institute a civil action under Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12111, et seq., against the above-named respondent. If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

Therefore, if you wish to pursue this matter, you should consult an attorney at your earliest convenience. If you are unable to locate an attorney, you may wish to contact the EEOC or apply to the appropriate court, since that court may appoint an attorney in appropriate circumstances under Section 706(f)(1) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1), referenced in Section 107(a) of the ADA, 42 U.S.C. § 2117(a).

We are returning the files in this matter to EEOC's District Office. If you or your attorney, have any questions concerning this matter or wish to inspect the investigative file, please address your inquiry to:


Michelle F. Eisele
District Director
Equal Employment Opportunity Commission
Indianapolis District Office
101 West Ohio Street, Suite 1900
Indianapolis, IN 46204

Enclosed you will find a list of state resources and a Notice of Rights under the ADA Amendments Act of 2008 (ADAAA).

We are forwarding a copy of this Notice of Right to Sue to the Respondent in this case.

Sincerely,

T.E. Wheeler, II
Acting Assistant Attorney General

BY: 
Amanda Maisels
Deputy Chief
Disability Rights Section

Enclosure:

Michigan State Resources
Notice of Rights under the ADAAA

cc: Charter Township of Clinton
EEOC-Indianapolis District Office

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

County in which action occurs

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filer provided by local rules of court. This form, approved by the Judicial Conference of the United States in purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

Case: 2:17-cv-11973

Judge: Tarnow, Arthur J.

MJ: Stafford, Elizabeth A.

Filed: 06-21-2017 At 10:37 AM

CMP WOJCIOWICZ V. CLINTON, CHARTER T
OWNSHIP OF (NA)

I. (a) PLAINTIFFS

DEFE

County of Residence of First Listed Defendant Macomb

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(b) County of Residence of First Listed Plaintiff Macomb

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 621 to 634Brief description of cause:
Disability discrimination in employment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :

New Lawsuit Check List

Instructions: Put a check mark in the box next to each appropriate entry to be sure you have all the required documents.

<input checked="" type="checkbox"/>	Two (2) completed Civil Cover Sheets.	Case: 2:17-cv-11973 Judge: Tarnow, Arthur J. MJ: Stafford, Elizabeth A. Filed: 06-21-2017 At 10:37 AM CMP WOJTOWICZ V. CLINTON, CHARTER T OWNERSHIP OF (NA)
<input checked="" type="checkbox"/>	Enter the number of defendants named in your lawsuit in the blank below, add 2 and then enter the total in the blank. $\frac{1}{\text{\# of Defendants}} + 2 = \frac{3}{\text{Total}} \text{ Complaints.}$	
	Received by Clerk: <u>NA</u> Addresses are complete: <u>NA</u>	
<input type="checkbox"/>	If any of your defendants are government agencies : Provide two (2) extra copies of the complaint for the U.S. Attorney and the Attorney General.	

If Paying The Filing Fee

If Asking That The Filing Fee Be Waived

<input checked="" type="checkbox"/>	Current new civil action filing fee is attached. Fees may be paid by check or money order made out to: Clerk, U.S. District Court Received by Clerk: <u>NA</u> Receipt #: <u>DET104783</u>	<input type="checkbox"/>	Two (2) completed Application to Proceed in District Court without Prepaying Fees or Costs forms. Received by Clerk: _____
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Select the Method of Service you will employ to notify your defendants:

Service via Summons by Self

Service by U.S. Marshal
(Only available if fee is waived)

Service via Waiver of Summons
(U.S. Government cannot be a defendant)

<input checked="" type="checkbox"/>	Two (2) completed summonses for each defendant including each defendant's name and address.	<input type="checkbox"/>	Two (2) completed USM - 285 Forms per defendant, if you are requesting the U.S. Marshal conduct service of your complaint.	<input type="checkbox"/>	You need not submit any forms regarding the Waiver of Summons to the Clerk. <u>Once your case has been filed, or the Application to Proceed without Prepaying Fees and Costs has been granted, you will need:</u> <ul style="list-style-type: none"> • One (1) Notice of a Lawsuit and Request to Waive Service of a Summons form per defendant. • Two (2) Waiver of the Service of Summons forms per defendant. Send these forms along with your filed complaint and a self-addressed stamped envelope to each of your defendants.
	Received by Clerk: <u>NA</u>		Received by Clerk: _____		

Clerk's Office Use Only

Note any deficiencies here: